Supreme Court, U.S.
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(8)

No. 10-868

IN THE

SUPREME COURT OF THE UNITED STATES

MATHEW CATE — PETITIONER
~~(Your Name)~~

VS.

ANTHONY SNEED — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

[X] ~~Petitioner~~ Respondent has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Northern District Court of California as well as the Nineth Circuit Court of Appeals

[ ] ~~Petitioner~~ Respondent has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Anthony C. Sneed
(Signature)

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Anthony C. Sneed, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$ 0	$ 0	$ 0	$ 0
Self-employment	$ 0	$ 0	$ 0	$ 0
Income from real property (such as rental income)	$ 0	$ 0	$ 0	$ 0
Interest and dividends	$ 0	$ 0	$ 0	$ 0
Gifts	$ 0	$ 0	$ 0	$ 0
Alimony	$ 0	$ 0	$ 0	$ 0
Child Support	$ 0	$ 0	$ 0	$ 0
Retirement (such as social security, pensions, annuities, insurance)	$ 0	$ 0	$ 0	$ 0
Disability (such as social security, insurance payments)	$ 0	$ 0	$ 0	$ 0
Unemployment payments	$ 0	$ 0	$ 0	$ 0
Public-assistance (such as welfare)	$ 0	$ 0	$ 0	$ 0
Other (specify): G.R	$ 75.00	$ 0	$ 2.00	$ 0
Total monthly income:	$ 3.80	$	$ 3.80	$ 0

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
			$
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
			$
			$
			$

4. How much cash do you and your spouse have? $ _____
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of account	Amount you have	Amount your spouse has
		$	$
		$	$
		$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value NONE

☐ Other real estate
Value NONE

☐ Motor Vehicle #1
Year, make & model NONE
Value NONE

☐ Motor Vehicle #2
Year, make & model NONE
Value NONE

☐ Other assets
Description NONE
Value NONE

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NONE	$ 0	$ 0
NONE	$ 0	$ 0
NONE	$ 0	$ 0

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
NONE	NONE	NONE
NONE	NONE	NONE
NONE	NONE	NONE

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$ 0	$ 0
Are real estate taxes included? ☐ Yes ☑ No Is property insurance included? ☐ Yes ☑ No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ NONE	$ NONE
Home maintenance (repairs and upkeep)	$ NONE	$ NONE
Food	$ NONE	$ NONE
Clothing	$ NONE	$ NONE
Laundry and dry-cleaning	$ NONE	$ NONE
Medical and dental expenses	$ NONE	$ NONE

	You	Your spouse
Transportation (not including motor vehicle payments)	$ None	$ None
Recreation, entertainment, newspapers, magazines, etc.	$ None	$ None
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ None	$ None
Life	$ None	$ None
Health	$ None	$ None
Motor Vehicle	$ None	$ None
Other: None	$ None	$ None
Taxes (not deducted from wages or included in mortgage payments)		
(specify): None	$ None	$ None
Installment payments		
Motor Vehicle	$ None	$ None
Credit card(s)	$ None	$ None
Department store(s)	$ None	$ None
Other: None	$ None	$ None
Alimony, maintenance, and support paid to others	$ None	$ None
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ None	$ None
Other (specify): None	$ None	$ None
Total monthly expenses:	$ None	$ None

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.
Unemployed

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 4/26/11 _____, 20 11

Anthony C. Succa
(Signature)

No. 10-868

IN THE SUPREME COURT OF THE UNITED STATES

MATTHEW CATE, SECRETARY,

Petitioner,

v.

ANTHONY SNEED,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENT SNEED'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

ANTHONY SNEED
627 East 99th Avenue
Los Angeles, CA 90002

Respondent
In Propria Persona

QUESTION PRESENTED

When a state creates a liberty interest in parole that entitles a prisoner to release from prison if he currently does not pose an unreasonable risk of danger, does the substantive component of the Due Process Clause protect the prisoner against the arbitrary denial of parole regardless of procedural protections he received?

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LIST OF PARTIES

In the petition for a writ of certiorari multiple petitioners and respondents are named. Changes in custody status and judgments have affected the party list.

Respondent Matthew Cate, Secretary of the California Department of Corrections and Rehabilitation, has constructive custody of those respondents released from prison on some form of supervision: John H. Pirtle, who is on state parole; Robert Johnson, who is on federal supervised release pending completion of this appeal; Anthony Sneed, who is on state parole. Respondent Michael Slater is free of all forms of custody. Warden Hartley, the warden of prison from which Mr. Sneed was released to parole, no longer has custody of Sneed and so does not appear to be a proper petitioner in this matter.

As the United States Court of Appeals for the Ninth Circuit vacated its decision in Respondent Ron Mosley's case, Mr. Mosley does not appear to be a properly named respondent in this matter.

No. 10-868

IN THE SUPREME COURT OF THE UNITED STATES

MATTHEW CATE, SECRETARY,

California Department of Corrections and Rehabilitation,

Petitioner,

v.

ANTHONY SNEED,

Respondent.

RESPONSIVE BRIEF TO PETITION FOR CERTIORARI

OPINIONS AND ORDERS BY COURTS AND ADMINISTRATIVE AGENCIES

In addition to the materials included in the Petitioner's appendix, the transcript of the August 4, 2004, parole board hearing at which Mr. Sneed was found suitable for parole and had a term set is material to the consideration of the petition. This transcript is reproduced in full in the Appendix to the Brief in Opposition, pages 7-82. The district court's December 1, 2010, order reinstating the Board's grant of parole

is found in the Appendix to the Brief in Opposition at pages 5-6. The state's January 20, 2011, notice of Sneed's release to parole is also set out in this appendix, at pages 1-4.

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

In addition to the federal statutory provisions identified by Petitioners as relevant, this case also implicates the federal constitutional and state statutory and regulatory provisions identified below:

United States Constitution, Amendment XIV.

> [N]or shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Penal Code Section 3041.

> (a) ... One year prior to the inmate's minimum eligible parole release date a panel of two or more commissioners or deputy commissioners shall . . . meet with the inmate and shall normally set a parole release date as provided in Section 3041.5. . . . The release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public, and that will comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of the crime for which the inmate was sentenced and other factors in mitigation or aggravation of the crime. ....
>
> (b) The panel or the board, sitting en banc, shall set a release date unless it determines that the gravity of the current convicted offense or offenses,

or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed at this meeting. After the effective date of this subdivision, any decision of the parole panel finding an inmate suitable for parole shall become final within 120 days of the date of the hearing. During that period, the board may review the panel's decision. The panel's decision shall become final pursuant to this subdivision unless the board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. In making this determination, the board shall consult with the commissioners who conducted the parole consideration hearing. No decision of the parole panel shall be disapproved and referred for rehearing except by a majority vote of the board, sitting en banc, following a public meeting.

California Constitution, Article V, Section 8(b).

No decision of the parole authority of this State with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. The Governor shall report to the Legislature each parole decision affirmed, modified, or reversed, stating the pertinent facts and reasons for the action.

///

STATEMENT OF THE CASE

1. Respondent Anthony Sneed was convicted of murder and sentenced to an indeterminate life term in 1982. When he was 18 years old, Sneed drove three juvenile teenagers, including Anthony Burton, to a house party. Once there, Burton argued with others at the party and fired several shots. No one was hurt. Sneed headed to his car to leave immediately after he heard the shots. The other teens he had brought to the party, including Burton, hurriedly got into Sneed's car. Sneed then drove them away, even though others at the party tried to stop the teenagers from leaving. Appendix to Brief in Opposition, page 19. When Sneed dropped two of the teens off at their home, Burton saw two people who had been at the party. He ran down an alley after them. The others followed him with Sneed getting out of his car, but remaining some hundred feet away when Burton shot the victims. Burton killed one person and wounded another. Appendix to Brief in Opposition, pages 20-27; Appendix to Petition, vol II, pages 187a-189a.

2. Mr. Sneed became eligible for parole in March 1997. Appendix to Brief in Opposition, page 9. Since then, he has been periodically considered for parole. At his 2004 parole suitability hearing, the Board found him "now suitable for parole and would not pose an unreasonable risk of danger to society or a threat to public safety if released from prison." Appendix to Brief in Opposition, page 70. The Board found

that Sneed had no juvenile record of assaulting others, had a stable social history, and that during his time in prison, Sneed had enhanced his ability to function within the law upon release by participating in educational programs, self-help and therapy programs, vocational programs, and obtaining his GED. Appendix to Brief in Opposition, page 70. The Board also found that Sneed lacked a significant criminal history of violent crimes, had matured and grown, and gained a greater understanding of the causative factors for his commitment offense. The Board concluded Sneed had successfully reduced his probability of recidivism. Appendix to Brief in Opposition, page 71. Sneed's realistic parole plans included a job offer, residence, and lots of family support. *Id.* None of the few prison disciplinary reports Sneed received involved any violence and the last dated from 1996. The Board characterized the three administrative chronos Sneed received during his time in prison as "very, very minor." *Id.* The Board also credited Sneed for demonstrating sincere and genuine remorse for the victim's death:

> You have shown signs of remorse .... You did know the victim, and you ... understand the nature and the magnitude of the offense, and ... accept responsibility for the criminal behavior , the part that you had in this commitment offense, and a desire to change towards good citizenship.

Appendix to Brief in Opposition, pages 72-73.

The Board also credited the psychological reports on Sneed, all of which concluded Sneed was an excellent candidate for parole because he posed "a lower risk

for violence than the average citizen in the community." *See* Appendix to Brief in Opposition, pages 72-73, 74-76. These entirely supportive psychological assessments consistently found Sneed was not a criminally oriented person and was expected to succeed on parole. *Id.* The Board set Sneed's total term of imprisonment at 236 months, while also noting that at that time Sneed had already served 269 months in prison. Appendix to Brief in Opposition, page 76.

3. The governing California parole statute provides that a parole release date "shall normally" be set once a prisoner becomes eligible for parole. California Penal Code § 3041(a). The statute provides only a single basis for denying an eligible prisoner parole: his release would pose a risk to public safety. Penal Code § 3041(b); *In re Lawrence*, 44 Cal.4th 1181, 190 P.3d 535 (Cal. 2008); *In re Shaputis*, 44 Cal.4th 1241, 190 P.3d 573 (Cal. 2008).

4. On December 18, 2004, the governor of California reversed the Board's grant of parole. *See* Appendix to Petition, vol II, pages 184a-190a. Sneed was not allowed to speak to the Governor or contest the evidence the Governor relied upon. He was notified of the reasons for the Governor's parole denial. Although the governor, as had the Board, credited Sneed with insight into his role in the murder, the governor considered this progress "too recent" to support a parole grant. Appendix to Petition, vol II, page 189a. The governor found Sneed's decision to

leave the scene to go get some snacks, even though Sneed knew at least that Burton had fired several shots, made the murder especially grave and reason enough to conclude Sneed would pose an unreasonable public-safety risk and so denied parole. Appendix to Petition, page 189a.

5. In denying habeas relief, the district court determined that the state-created liberty interest in parole gave Sneed a federally protected due process right to be free of the arbitrary denial of release to parole: that is, absent evidence that he posed a current risk of safety to the public Sneed had a right protected by the federal constitution's substantive due process clause to be found suitable for parole. In denying relief, the district court relied on a test for arbitrariness adopted by California Supreme Court in *In re Rosenkrantz*, 29 Cal. 4th 616, 128 Cal. Rptr. 2d 104, 59 P. 3d 17 (Ca 2002), but which that Court rejected in *Lawrence* because it "proved in practice to be unworkable, leading to arbitrary results." *Lawrence*, 44 Cal. 4th at 1213, 82 Cal. Rptr. 3d at 191, 190 P. 3d at 554.

6. On appeal, the Ninth Circuit reversed the denial of habeas relief in a memorandum decision. Appendix to Petition, page 164a. Relying on the Circuit's *Cooke* decision and accepting the California Supreme Court's *Lawrence* analysis as satisfying the minimal federal Due Process requirements, the appellate court determined that Sneed's commitment offense did not establish his current

dangerousness in light of the strong evidence of sustained rehabilitation. *See* Appendix to Petition, vol II, page 165a.

7. Following the Circuit's denial of rehearing, Appendix to Petition, vol II, page 163a, on December 1, 2011, the district court granted habeas relief and declared that the Board's 2004 decision to grant parole "must be reinstated and implemented." Appendix to Brief in Opposition, page 6. The state released Sneed to parole on January 13, 2011. *Id.* page 2. Sneed has fully complied with all conditions of parole during these months he has been released on parole. The state has set the period of parole at five years. *Id.* page 4.

REASONS FOR DENYING THE WRIT, OR, ALTERNATIVELY GRANTING PLENARY REVIEW

A. THE PETITION SHOULD BE DENIED

Petitioner Cate raises a single question in his petition for writ of certiorari which this Court summarily answered in *Swarthout v. Cooke*, 562 U.S. __, 131 S. Ct. 859, 178 L. Ed. 2d 732 (2011)(per curiam). As phrased by the Petitioner, this question was:

> Whether a federal court may grant habeas corpus relief to a state prisoner based on its view that the state court erred in applying the state-law standard of evidentiary sufficiency governing state parole decisions.

This Court does not act as a court of error in granting certiorari review. *See, e.g.*, Sup. Ct. R. 10 (setting forth the considerations for determining certiorari and stressing that certiorari is a matter of judicial discretion that will be granted "only for compelling reasons"). In light of the narrow question that the Petitioner raises which this Court already answered in *Cooke*, there is no compelling reason to grant certiorari. *Cooke* accepted the Ninth Circuit's holding that California law created a Due Process protected liberty interest in parole. *Cooke*, 131 S. Ct. at 861-862, 178 L. Ed. 2d at 736. The Court directly addressed only the procedural Due Process requirements of such a liberty interest. *Cooke* thus held that the respondents's Due Process rights were satisfied because they "were allowed to speak at their parole hearings and to contest the evidence against them, were afforded access to their records in advance, and were notified as to the reasons why parole was denied." 131 S. Ct. at 862, 178 L. Ed. 2d at 736.

In Sneed's case, the Governor denied parole without allowing Sneed to speak to the Governor or to address the evidence the Governor viewed weighed against him. Sneed was notified of the Governor's reasons for denying parole. As Sneed did not receive all the procedural protections *Cooke* requires, the district court's ultimate grant of habeas relief was correct even if the Circuit's rationale was not based on *Cooke*. Thus, certiorari should simply be denied.

B. ALTERNATIVELY THIS COURT SHOULD GRANT PLENARY REVIEW

But if certiorari is granted, it should be granted plenary review. The Ninth Circuit has now interpreted *Cooke* as also deciding the substantive Due Process question raised in these cases. *Miller v. Oregon*, No. 07-36086, slip op. at 5325, 2011 U.S. App. LEXIS 8447, *13 (9th Cir. April 25, 2011)("The Supreme Court held in *Cooke* that in the context of parole eligibility decisions the due process right is *procedural*, and entitles a prisoner to nothing more than a fair hearing and a statement of reasons for a parole board's decision....")(emphasis in original); *Roberts v. Hartley*, No. 10-15760, slip op. page 5008, 2011 U.S. App. LEXIS 7434, *8 (9th Cir. April 12, 2011)(holding *Cooke* "there is no substantive due process right created by California's parole scheme."); *Pearson v. Muntz*, No. 08-55728, 2011 U.S. App. LEXIS 6866 (9th Cir. April 5, 2011).

Given the Circuit's interpretation of *Cooke*, neither a summary reversal nor a decision to grant, vacate, and remand in light of *Cooke* will permit a full and fair consideration of the substantive Due Process question raised in these cases. But such a full review is warranted. The substantive Due Process issue was not addressed by this Court because this Court's focus in deciding its *per curiam Cooke* decision was on the *en banc* Ninth Circuit opinion in *Hayward v. Marshall*, 603 F.3d 546 (9th Cir. 2010), which had created a hybrid form of judicial review that was in part standards

applied by 28 U.S.C. § 2254(d) and in part adoption of California Supreme Court's judicial review standard. *See, Cooke*, 131 S.Ct. at 862, 178 L. Ed. 2d at 737(per curiam opn.); *id.* 131 S.Ct. at 863, 178 L. Ed. 2d at 738 (Ginsburg, J., concurring). This creation was plainly rejected.

But this Court's starting point was to view the Ninth Circuit, through *Hayward*, as recognizing only a California-created procedural Due Process liberty interest in parole -- thus, the Court's *Cooke* decision is limited to terms of procedural protections. *Id.* In a note, this Court raised the novel idea that some Due Process protected interests are not to be accorded all of the Due Process Clause's requirements. *Cooke* 131 S.Ct. at 737* ("the question of which due process requirements apply is one of federal law"). This starting point was flawed for at the core of Due Process is a single requirement – to protect the individual from adverse arbitrary denials of protected interests. This Court's implicit adoption of a lesser Due Process protected interest deserves full briefing and consideration.

As understood by the Ninth Circuit, this Court essentially dismissed the substantive Due Process issue by parsing out the procedural and substantive elements of the protections that are inherent in the Due Process Clause and dropping from existence the substantive protection against adverse arbitrary state action. Thus, there is no federal judicial review that can protect from arbitrary denials of liberty in the

context of a state-created right to parole. Such an abandonment of the core meaning of the United States Constitution's Due Process Clause is unprecedented. Quite to the contrary, this Court's cases have held uniformly that the Due Process Clause exists to protect the individual against arbitrary adverse governmental decisions. It "is not an end in itself. Its constitutional purpose is to *protect a substantive interest* to which the individual has a legitimate claim of entitlement." *Olim v. Wakinekona*, 461 U.S. 238, 250, 75 L. Ed.2d 813, 103 S. Ct. 1741 (1983)(emphasis added).

Thus, if certiorari is not simply denied, a full plenary review should be granted. There is no doubt that California parole law creates a right to parole release for indeterminately sentenced prisoners eligible for parole. *See* Cal. Penal Code § 3041; *In re Lawrence*, 44 Cal.4th at 1211-1212, 1227 (Ca. 2008). Given the Ninth Circuit's reading of *Cooke*, without plenary review *Cooke* stands for the conflicting notion that California's parole law created a liberty interest in parole protected by federal Due Process, but of a lesser quality of liberty as it can be arbitrarily denied without federal violating the Due Process Clause. Thus, if certiorari is granted, this Court should grant certiorari to consider this related question:

> When a state creates a liberty interest in parole that entitles a prisoner to release from prison if he does not pose an unreasonable risk of danger, does the substantive component of the Due Process Clause protect the prisoner against the arbitrary denial of parole regardless of procedural protections he received?

Without full review, an individual's state-created liberty interest in parole may be arbitrarily denied and the individual will have no right to federal judicial review to challenge that substantive decision that arbitrarily denied parole release. This effectively exempts substantively unsupportable parole denial decisions from the substantive protections the Due Process Clause was adopted to guarantee. The individual is thus left unprotected in a very meaningful and harmful way from the state government's arbitrary denial of liberty.

This exemption from substantive Due Process protection is entirely inconsistent with this Court's substantive Due Process jurisprudence in other contexts. Until *Cooke*, once a protected interest in life, liberty, or property existed, it was protected by federal due process in both a substantive and a procedural way.

1. To Guard Against Arbitrary Decisions, Judicial Review of the Substantive Decision is Required; A Fair Process Does Not End the Judicial Review

The essence of due process is the freedom from arbitrary and capricious decisions. *Jackson v. Virginia*, 443 U.S. 307, 314 (1979) ("freedom from a wholly arbitrary deprivation of liberty" is "the most elemental of due process rights"). Government action that deprives a person of liberty violates due process if it does not have a rational connection to a legitimate purpose. *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) ("narrowly tailored to serve a compelling state interest"); *see*

also, Kelch v. Director, Nevada Department of Prisons, 10 F.3d 684, 688 (9th Cir. 1993) ("rational, non-arbitrary connection to a legitimate purpose"). By its very language, the United States Constitution's Fourteenth Amendment prohibits any state from depriving "any person of life, liberty or property, without due process of law . . ." U.S. Const. 14 Amend. Thus, when the state seeks to take a person's life, liberty, or property, the person is entitled to the protection the federal Due Process Clause provides.

A decision unsupported by evidence is, by definition, arbitrary because it does not have a rational connection to a legitimate governmental purpose. *Demore v. Kim*, 538 U.S. 510, 552 (2003). Thus, "[i]n a variety of contexts, the [United States Supreme] Court has recognized that a governmental decision resulting in the loss of an important liberty interest violates due process if the decision is not support by any evidence." *Superintendent, Massachusetts Correctional Institution v. Hill,* 472 U.S. 445, 455 (1985), and cases cited therein. In the context of prisoners "right" and parole release, the issue is complicated only by the need to determine whether the prisoner has a liberty interest in parole release. In most states and federally, there is not "right" to parole release from an indeterminate life sentence. But California is different. There is simply no dispute that under this Court's precedents, California law creates a Due Process protected liberty interest in parole release for term to life prisoners eligible for

parole. *See Cooke*, 131 S. Ct. at 736. It is only where a prisoner has *no* liberty interest that the state may take action against him without any supporting evidence, that is, "for whatever reason or for no reason at all." *Meachum v. Fano*, 427 U.S. 215, 228 (1976) (transfer of prisoner from one prison to another does not infringe on a liberty interest protected by due process).

The need for a substantive review of the governmental decision that adversely impacts an individual's protected rights is evident in other types of Due Process cases, such as challenges to the loss of "life" and "property." Even in the context of a state jury's determination of punitive damages awarded one private party in his dispute with another, this Court has repeatedly concluded that the Due Process protects both the defendant property owner's procedural rights to notice of the claimed harms, a right to defend against such claims, but also the substantive right to be protected frm arbitrarily high damage awards. *See e.g., Philip Morris USA v. Williams*, 549 U.S. 346, 352, 354, 127 S. Ct. 1057, 1062, 1063, 166 L. Ed. 2d 940 (2007)("the fundamental due process concerns [are] -- risks of arbitrariness, uncertainty and lack of notice" and recognizing that punitive damage awards cannot become "arbitrary punishments," *i.e.*, punishments that reflect not an "application of law" but "a decisionmaker's caprice,"). *Philip Morris USA* explained concisely that Due Process requirements impose both procedural and substantive limitations:

> [T]his Court has found that the Constitution imposes certain limits, in respect both to procedures for awarding punitive damages and to amounts forbidden as "grossly excessive." See *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432, 114 S. Ct. 2331, 129 L. Ed. 2d 336 (1994) (requiring judicial review of the size of punitive awards); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 443, 121 S. Ct. 1678, 149 L. Ed. 2d 674 (2001) (review must be *de novo*); *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574-585, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996)] (excessiveness decision depends upon the reprehensibility of the defendant's conduct, whether the award bears a reasonable relationship to the actual and potential harm caused by the defendant to the plaintiff, and the difference between the award and sanctions "authorized or imposed in comparable cases"); *State Farm* [*Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 425, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003)] (excessiveness more likely where ratio exceeds single digits).

Philip Morris USA, 549 U.S. at 354, 127 S. Ct. at 1062-1063, The difficulty courts may face in determining when a substantive due process violation has occurred, does not undercut the substantive due process right's existence:

> [O]ur cases have announced due process standards that every [punitive damages] award must pass. See, *e.g.*, *State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 425, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003); *Gore*, 517U.S., at 574-575, 116 S. Ct. 1589, 134 L. Ed. 2d 809. Although "we have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula," *id.*, at 582, 116 S. Ct. 1589, 134 L. Ed. 2d 809, we have determined that "few awards exceeding a single digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process," *State Farm*, 538 U.S., at 425, 123 S. Ct. 1513, 155 L. Ed. 2d 585;

> "[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee," *ibid.*

Exxon Shipping, Co., v. Baker, 554 U.S. 471, 501, 128 S. Ct. 2605, 2626, 171 L. Ed. 2d 570 (2008).

In non-criminal cases involving deprivation of "life," the Court again clearly recognizes both procedural and substantive Due Process protections. Thus in *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed. 1042 (1923), the Court held that the liberty guaranteed by the Fourteenth Amendment gave the courts power to determine whether a state legislative enactment was so substantively arbitrary as to violate Due Process. This constitutional clause:

> denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men. [Citations omitted] The established doctrine is that *this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary* or without reasonable relation to some purpose with the competency of the State to effect.

262 U.S. at 399-400. *Meyer* went on to hold that substantive due process barred a state from enacting a statute that prohibited teaching in any language other than

English. 262 U.S. at 402-403. Likewise, substantive due process may be violated by "deliberate indifference" to the medical needs of pretrial detainees, *City of Revere v. Massachusetts Gen. Hospital*, 463 U.S. 239, 244-245, 103 S. Ct. 2979, 77 L. Ed. 2d 605 (1983), or of involuntarily committed mental patients, *Youngberg v. Romeo*, 457 U.S. 307, 314-325, 102 S. Ct. 2452, 73 L. Ed. 2d 28(1982).

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2. Federal Judicial Review for Arbitrary Decisionmaking Minimally Requires the Court to Assess Whether Some Evidence Supports the Challenged Decision

The need for at least some reliable evidence to support a deprivation of liberty has long stood as the federal constitutional floor that must be present to meet due process concerns. "A finding without evidence is arbitrary and baseless ... Such authority ... is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercises of power." *ICC v. Louisville & Nashville RR*, 227 U.S. 88, 91 (1913). The requirement for at least some evidence is inherent in the finding of a protected liberty interest. In a multitude of contexts, this Court has consistently held that some evidence must support a decision that adversely affects a protected due process interest. *See, e.g., Hill*, 472 U.S. at 455 (liberty lost in prison custody credits); *Douglas v. Buder*, 412 U.S. 430, 432 (1973)(liberty lost in revocation of probation); *Schware v. Board of Bar Examiners*, 353 U.S. 232, 239 (1957)(denial of right to qualify for practice of law); *Dickinson v. United States*, 346 U.S. 389, 397 (1953)(draft board's rejection of a registrant's claim of exemption from military draft cannot be based on suspicion and speculation); *United States ex rel. Vajtauer v. Commissioner of Immigration*, 273 U.S. 103, 106 (1927)(warrant of deportation upheld because it was supported by evidence); *see also* Neuman, *The Constitutional Requirement of "Some Evidence,"* 25 San Diego L.Rev. 631, 688

(1988) (chronicling since 1912 "the Court's continuing perception of a need to scrutinize decisions for 'some evidence' that supports" any deprivation of a protected liberty interest).

Thus, if certiorari is granted, a plenary review of the judicial review should focus on the need to assess compliance with the requirements of substantive Due Process.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied because the question presented is no longer in dispute. Under *Cooke* analysis, Sneed was denied Due Process. Alternatively, this Court should grant plenary review to address the substantive Due Process judicial review standards applicable in these types of cases.

DATED: April 26, 2011

Respectfully submitted,

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Respondent
In Propria Persona

No. 10-868

IN THE SUPREME COURT OF THE UNITED STATES

MATTHEW CATE, Secretary,

Petitioner,

v.

ANTHONY SNEED,

Respondent.

CERTIFICATE OF SERVICE

I, _____, do swear or declare that on this date, April 27, 2011, as required by Supreme Court Rule 29 I have served the enclosed **MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, RESPONDENT SNEED'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI, AND APPENDIX TO BIO** on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on April 27, 2011.